

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT WASHINGTON,

Plaintiff,

v.

STEVEN M. YAPLEE,

Defendant.

Case No. 1:20-cv-01356-EPG (PC)

ORDER RE: PLAINTIFF'S OPPOSITION
TO DEFENDANT'S NOTICE OF TAKING
DEPOSITION

(ECF No. 62)

Robert Washington ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On December 13, 2022, Plaintiff filed an opposition to Defendant's notice of taking deposition. (ECF No. 62). Plaintiff alleges that on approximately November 28, 2022, Plaintiff received a notice of deposition. Plaintiff argues that the deadline to take his deposition has passed, and that Defendant has not asked for leave of Court to take Plaintiff's deposition. Plaintiff asks the Court to "deny defendant's order/notice for deposition or to show good cause for this deposition and their failure to depose Plaintiff during the discovery schedule." (*Id.* at 1).

On December 22, 2022, Defendant filed a response. (ECF No. 64). Defendant states that, on November 22, 2022, Defendant noticed Plaintiff's deposition. Due to a calendaring error, Defendant did not realize that the discovery deadline had already passed. After receiving Plaintiff's motion to set trial date, which was filed on November 23, 2022, Defendant realized

1 that the discovery deadline had passed, contacted Plaintiff's institution of confinement, and took
2 Plaintiff's deposition off-calendar. Defendant further states that if the case does not settle at the
3 upcoming settlement conference, which is scheduled for January 18, 2023, Defendant will file a
4 motion with the Court for an order allowing him to take Plaintiff's deposition and will fully brief
5 the issue at that time.

6 Given Defendant's response, the Court will take no further action on Plaintiff's opposition
7 to Defendant's notice of taking deposition. If the case is not resolved at the upcoming settlement
8 conference and Defendant files a motion for an order allowing him to take Plaintiff's deposition,
9 Plaintiff may file an opposition to that motion within twenty-one days of the date of service of
10 that motion.

11 IT IS SO ORDERED.
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13 Dated: January 3, 2023

14 /s/ *Eric P. Groj*
15 UNITED STATES MAGISTRATE JUDGE
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